

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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APR 21 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Second Periodic Review of the
Commission's Rules and Policies
Affecting the Conversion
To Digital Television

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MB Docket No. 03-15

COMMENTS OF NATIONAL BROADCASTING COMPANY, INC.
AND TELEMUNDO GROUP, INC.

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To: The Commission

**COMMENTS OF NATIONAL BROADCASTING COMPANY, INC.
AND TELEMUNDO GROUP, INC.**

National Broadcasting Company, Inc. and Telemundo Group, Inc. (collectively, "NBC/Telemundo") jointly submit these comments to highlight critical aspects of the Commission's ongoing assessment of the nation's transition to digital television ("DTV").¹

Summary and Introduction

NBC/Telemundo agrees with the Commission that broadcasters have successfully commenced the nation's DTV transition. However, the efforts thusfar are not likely to persuade consumers, who remain the most critical group for a successful DTV transition. The consumer does not yet know why digital television serves his or her interests or, more basically, why he or she should spend hundreds or thousands of dollars to upgrade to digital his or her televisions, VCRs and other video devices. In order to protect and persuade the consumer, any DTV policy should aim to i) minimize any disruption to existing over-the-air analog television service until

¹ Notice of Proposed Rule Making, *In Re Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Transition*, MB Docket No. 03-15 (rel. Jan. 27, 2003) ("Notice"). Pursuant to a subsequent order extending the comment period in this proceeding, these comments are timely filed. See Order, *In Re Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Transition*, MB Docket No. 03-15 (rel. March 26, 2003).

the digital transition is complete; and ii) encourage consumers to make the substantial investment in digital television by enabling stations to invest in innovative or more extensive programming.

With these principles in mind, NBC/Telemundo believes that the Commission should adopt the following policies:

- No television station in a Designated Market Area (“DMA”) should be compelled to surrender its analog license until a reasonable time after the Commission has demonstrated that at least 85 percent of all households in the station’s DMA can access from every television station eligible for mandatory carriage to that household at least one digital signal at a level of viewing quality that equals or exceeds that broadcast by the station.
- The Commission should not endanger existing levels of service by authorizing sudden changes in existing analog or DTV channel allotments, including channel exchanges outside established rulemaking processes.
- Until the transition is complete, the Commission should limit extensive further mandatory investment by broadcast stations in digital lest stations be forced to divert money on hardware or electricity that may be better spent on innovation that would encourage consumers to make the personal investment in digital.
- In order to maximize broadcaster understanding of how DTV works in the real world, the Commission should not require any station to elect its post-transition channel prior to May 1, 2005, and may wish to consider policies that would extend that date in particular markets depending on the status of that market’s DTV transition.
- The Commission should encourage stations to develop innovative means of serving larger populations on their existing channels through the distributed transmission or multiple transmitter systems, as long as those systems scrupulously protect other broadcasters.
- The Commission should not attempt to specify content obligations on broadcasters in the digital environment until it is determined whether cable operators will be able to prevent programming from local television stations from reaching their local viewers following the transition.
- The Commission should continue to press other segments of the video industry to assist the consumer’s transition to digital, including such basic measures as clear labeling specifying whether a television receiver can receive over-the-air signal and that, within a few years, analog equipment may no longer work without digital to analog converters. It also should accelerate, as part of this or other pending proceeding, the inclusion of over-the-air digital tuners.

The Digital Transition, Which Has Been Broadly Commenced By Broadcasters, Now Depends On The Consumer

Broadcasters have invested huge sums into driving the digital transition forward.

According to a recent NAB release, DTV signals are being transmitted in television markets that include 97.44% of U.S. television households, and most U.S. households are in television DMAs with five or more free, over the air digital signals.’

That progress has not been without cost. For example, NBC/Telemundo has invested heavily in the digital transition, both at the network and station level. NBC alone has invested approximately \$100 million in facilities and infrastructure to make available high definition programming, and is increasing its high definition network programming to 60 percent of its prime time and late night lineup, as well as certain special events, movies and sports.

NBC/Telemundo is investigating other content that would interest consumers into transitioning to digital, but, like other broadcasters, recognizes that any such programming does not yet have any guarantee of ever being seen by those who get television signals through means other than over-the-air antennas. Even the level of NBC/Telemundo’s current “dual” operations – in analog and digital – is hard to justify in economic terms, in light of the clear reluctance of consumers to spend the thousands of dollars necessary to obtain a single digital television set and tuner.’

Accordingly, of all the questions posed or implied by the *Notice*, the single most important is what will it take to persuade the U.S. public to invest in home digital technology, including (in most cases) multiple digital television sets. To convince consumers, consumers at least must be able: i) to get better content than their analog experience; and ii) to access digital

¹ National Association of Broadcasters, Press Release, 824 TV Stations Broadcasting in Digital (released April 17, 2003).

³ See, e.g., *Notice* at para. 95 (noting that only 5 percent of all television sets sold in the United States during 2001 were not analog-only).

television in the same manner, and with the same ease, that they have become accustomed to in the analog world. But consumers must be convinced, not coerced. Until consumers voluntarily complete the digital transition, fairness, public safety and the public interest require that consumers are able to rely on established analog signals until such time as they can complete their personal transition to digital.

The Commission Should Not Compel Consumers To Switch To DTV Through Premature Disruption Of Existing Analog Service

Congressional mandate and common sense alike confirm that the Commission must protect existing analog service at least until nearly all consumers already have embraced the digital transition. Congress has required that no television station may be compelled to surrender its analog television broadcast license until nearly all of the television households in a market has some access to digital television signals.⁴ And it is nonsensical to argue that the Commission serves the public interest by depriving millions of households from any sort of actual reception of any of their local television stations.’

Accordingly, the Commission must be sure that nearly all of a market’s consumers can receive digital television signals before terminating analog service in that market. In practice, that means that: i) no analog or digital incumbent station should be forced to change its channel or to accept new interference – regardless of that station’s channel election, its operations on out-of-core channels or on a channel adjacent to new wireless services, or proposed channel changes

⁴ See 47 U.S.C. § 309(j)(14)(B)

⁵ Indeed, outside of the DTV transition, the Commission has refused to approve channel changes that would have resulted in loss of established service from a single television station as contrary to the public interest. See, e.g., *Triangle Publications, Inc.*, 37 FCC 307, 313 (1964); *Hall v. FCC*, 237 F.2d 567 (D.C. Cir. 1956). Under that standard, even the 85 percent threshold set by Congress may be too low: under even the strictest reading of the statute, 15 percent of the New York DMA – or roughly 1.1 million households – could lose access to all over-the-air television service.

in other markets until the digital transition is complete; and ii) Section 309(j)(14) of the Communications Act, as amended, should be read to protect consumers' access to broadcast television.

The second point requires further elaboration. Under Section 309(j)(14), at least 85 percent of the households in a particular market either:

- must subscribe to a multichannel video programming distributor that carries at least one digital signal from each of the television stations in that market; or
- must have at least one television set able to receive (or downconvert to analog) over-the-air digital signals.

NBC/Telemundo urges that the Commission read this clear prohibition against the premature termination of analog broadcast television service to mean that no television station in any Designated Market Area ("DMA") should be compelled to surrender its analog television broadcast license until a reasonable time after the Commission has demonstrated that at least 85 percent of all households in the station's DMA can access at least one digital signal -- at a level of quality equal to that broadcast -- from every television station eligible for mandatory carriage to that household.

Taking each aspect of this standard in turn demonstrates why such a reading is necessary. First, the Commission should treat the statutory reference to television market as equivalent to DMAs. Television stations, advertisers and other Commission regulations with which Congress has reason to be familiar, including local television ownership and mandatory carriage rules, view DMAs as the proper market definition for broadcast television. DMA also better comports with the language of the statute, which implies that a market is expected to have several voices? and each is expected to have at least one big-four affiliate. A definition that is based on substantial contour overlap often may not reflect either characteristic.

Second, although not clearly addressed in the *Notice*, the Commission must ensure that stations have a reasonable number of months to make any final preparations necessary ~~for~~ full digital operations before stations should be expected to terminate analog operations. This time period necessarily will depend on how promptly the Commission will be able to process modification applications to, for example, change a station's DTV allotment to its analog allotment, or make other adjustments necessitated by the end of the transition.⁶ Regardless, the Commission cannot expect broadcasters or consumers to transition to a new channel (or make other necessary changes) overnight.

Third, the Commission, not individual licensees, must conduct the initial analysis of whether a market has satisfied the digital threshold. NBC/Telemundo agrees that Congress implied as much in the legislative history of the provision.⁷ NBC/Telemundo also notes that the Commission likely has far better access to information relating to MVPD subscriber levels and consumer electronic sales in a particular market than any individual broadcaster. In addition, individual broadcasters may present different analyses as to the status of the market; a single Commission analysis will avoid such issues, which might otherwise result in substantial delay in determining the status of the market.

Fourth, access to at least one digital signal at a level of viewing quality that equals that broadcast by the station is critical to ~~fulfill~~ the purpose of the statute: to enable consumers to delay their personal transition until digital signals are widely available and each consumer has

⁶ As part of this process, the Commission not only should enable a television station to terminate analog operations on the "initial" DTV deadline, even if its market were subject to a Section 309(j)(14) extension, see, e.g., *Notice* at n. 116, but also at any point following that deadline.

See Notice at para. 93.

had sufficient time and reason to be convinced to accept digital.* From that perspective, the Commission's conclusion -- that a household that is to be counted as DTV-ready via a MVPD service also must "have the capability to view digital broadcast signals" -- is the only approach consistent with the statutory framework." Otherwise, consumers will have no opportunity to be persuaded to move to digital before the termination of analog service compels them to do so. Likewise, if a cable system downconverts a digital signal at its headend to an analog or a lower-resolution digital signal than what is broadcast to the cable system, that signal is far less likely to convince the consumer as to the benefits of digital and effectively deprives that consumer of his or her "vote" as to whether the market should move to digital.¹⁰ Accordingly, a household that receives a digital signal that the MVPD downconverted or reduced in quality beyond that level broadcast should not count toward satisfying the 85 percent threshold.

Fifth, NBC/Telemundo agrees with the Commission that the definition of in-market television signals, for purposes of the DTV transition, should be limited to those stations that have a right to mandatory carriage to the household in question." Because all full-power stations that have a viewable signal, are non-duplicative, and are historically viewed in a community are virtually assured of mandatory carriage rights," this definition is a reasonable

⁸ See, e.g., *Notice* at para. 92 (noting concern in Conference Report that "a significant number of consumers in any given market are not left without broadcast television service.")

⁹ *Id.* at para. 89

¹⁰ That Congress carved out an exception for individuals who own downconverters confirms this point. An individual with a downconverter has personally chosen to opt out of the benefits of digital; an MVPD did not choose to opt out for him.

¹¹ See *Notice* at para. 87, n. 117.

¹² See, e.g., Memorandum Opinion & Order, *VSC Communications Inc., Shreveport, LA For Modification of Televisioii Broadcast Station KSLA's ADI*, 10 FCC Rcd 8227 (CSD, 1995).

delincation between stations too distant to expect to be received by a particular household and those that should be available

Independent of Section 309(j)(14), [the Commission should limit disruption to existing analog television service through other policies. Most notably, the Commission should protect existing analog signals from new potential or unforeseen interference by not eliminating procedural safeguards, including the Commission's allotment rulemaking process, to channel exchanges between a station's existing analog or DTV allotments prior to the end of the DTV transition. The Commission's procedures have acknowledged that, in the allotted services (like TV or FM), channel changes demand procedural protections in addition to those afforded minor modifications.¹³

Convincing The Consumer Requires Broadcasters To Have As Much Freedom As Possible To Develop The Digital Frontier

Television stations (and networks) have invested huge upfront sums in developing the infrastructure – from cameras to transmitters – necessary to broadcast in digital. To recoup that investment, they have every incentive to develop innovative content or other product to attract consumers.

From NBC/Telemundo's perspective, the transition requires us not only to compete against other media, including the internet, cable, satellite and recorded video, but also against

¹³ See, e.g., 47 C.F.R. §73.3572(a)(1) ("Other requests for change in frequency or community of license for TV broadcast stations must first be submitted in the form of a petition for rulemaking to amend the Table of Allotments.") Of course, once the DTV transition is complete in a particular market, all affected broadcasters by that point should have constructive notice of a station's election to change its digital operations to its former analog channel, so a modification application may well be sufficient.

our own analog signals. To succeed, NBC/Telemundo needs to persuade viewers that our digital offerings are better than our existing analog services.

These realities offer broadcasters and the Commission alike a rare opportunity to attempt innovation without risking service to consumers. During the transition, consumers will remain able to access from analog broadcasts the established information and entertainment programming that they enjoy and expect. Accordingly, the Commission should be particularly reluctant to force broadcasters to waste the transition period by spending their limited funds to perfect delivery systems or develop new mandatory content. Instead, the Commission should free television broadcasters to develop innovative content and otherwise demonstrate why the digital transition will benefit consumers. In addition, broadcasters should be assured that other segments of the video programming industry, including cable and consumer electronic manufacturers, also will continue to work to convince consumers of the multiple benefits of digital.

The Commission already has tentatively recognized the importance of the first principle in many of the proposals in the *Notice*. For example, the *Notice* sensibly suggests that the Commission should delay the discussion of how specific content requirements until other critical policies have been resolved, such as the extent to which cable operators will be able to deny consumers some of the programming aired by an eligible television station.¹⁴

¹⁴ See *Notice* at para. 112. Indeed, the Commission's implicit willingness to delay the determination of specific public interest requirements on multicast signals until more fundamental questions regarding the continued cable carriage of the entirety of a local television station's programming are answered should extend to other content issues raised by the *Notice*. The digital environment could result in significant changes in the manner, not just the content, of broadcast television. In order to not prejudice the burdens on digital programming, the Commission should delay further action on these issues until the nature of future digital broadcasting is more apparent.

The Commission should extend this principle to other issues raised by the *Notice*. For example, until the transition is complete, the Commission should limit extensive further mandatory investment by broadcast stations in digital lest stations be forced to divert money to hardware or electricity that may be better spent on innovation that would encourage consumers to make the personal investment in digital.” In practice, that means that the Commission should continue to protect a station’s current maximum authorized signal, whether that protection is based on a station’s allotted, replicated or maximized facilities, until the end of the DTV transition. It also means that the Commission should be hesitant to require stations to increase their existing signal strength or service areas until broadcasters have had some time to attract a greater number of consumers to digital services or unless there is compelling evidence that the digital transition will stall without further signal strength mandates

In order to maintain licensees’ focus on digital content, the Commission also should limit other technical demands on stations during this stage of the transition. For example, the choice of a station’s post-transition digital channel may require substantial technical analysis ranging from the proven robustness of digital signals in general to troubling signal or terrain effects in a particular market. **As** the transition continues, more and more information regarding what works

¹⁵ However, the Commission should encourage, but not require, *bona fide* technical innovations – including, for example, the use of distributed systems or multiple transmitters to broadcast a digital signal – by those broadcasters that see such innovations as playing a critical role in their ability to persuade consumers of the benefits of the digital environment. *See, e.g.*, Comments of Telemundo to Public Notice, Media Bureau Seeks Comment on Request for Special Relief by Licensee of WSTE-TV, Ponce, Puerto Rico, Seeking Special Unitary License for Multi-Site Transmission Facility, DA 02-3383 (Dec. 10, 2002) (submitted January 9, 2003). The analysis of multiple transmitter systems appears to be a particularly appropriate innovation to test during the transition, because Commission oversight and the nature of such systems should ensure that the most significant risk would be from “internal” interference, rather than more troubling interference to other stations. Accordingly, during the DTV transition, stations could be sure that key programming reaches consumers through a traditional facility, while being able to experiment more freely with their second signal delivery system.

in a digital environment is likely to become available. Accordingly, the Commission should not require any station to elect its post-transition channel prior to May 1, 2005, and should delay the election date in any market where either a broadcaster or the Commission can demonstrate that the market is not likely to complete its digital transition until the initial DTV deadline, which is currently set for December 31, 2006.

In addition, this focus on programming, rather than technical upgrades, does not preclude the Commission from asking parties to construct at least a digital facility within a reasonable period. Unless a station has an operating digital facility, it has no opportunity to innovate or to persuade consumers to move to digital. In order to facilitate prompt roll-out by any non-operational stations, the Commission should ensure that all stations with a paired DTV allotment should have applied for a digital construction permit and should have that application resolved by May 2004, and that denied applicants should have their subsequent applications reviewed as promptly as possible. Assuming that these requirements can be satisfied, the Commission may reasonably expect DTV permittees to have (or, in cases of temporary setbacks, have had) a digital facility in operation by December 31, 2004 (or later date, depending on the timing of the Commission's order in this proceeding), except in the most extraordinary circumstances.

**The Commission Should Look to Other Sectors of the Video Industry
to Support Efforts to Persuade Consumers to Go Digital**

Broadcasters have been broadly complying with Commission mandates to jump-start the digital transition for several years, even though broadcasters widely recognized that the initial market for DTV viewers would be limited. More recently, the Commission has sensibly recognized the need to encourage other key segments of the video industry to adopt digital, even

in the absence of substantial consumer demand.¹⁶ NBC/Telemundo applauds these efforts, both by the Commission and by other segments of the video industry, and supports additional steps by other segments of the video industry to facilitate consumer acceptance of digital television. Substantial evidence, including the recent federal report cited by the *Notice*, underscores that, despite all current efforts, most Americans do not understand the effect of the ongoing DTV transition on their video equipment.¹⁷ Given that the transition has been underway for several years, this fact alone provides sufficient policy justification for requiring video equipment to have labels explaining whether and how it can receive over the air digital signals, as well as a notification that, following December 31, 2006, analog equipment no longer may work without an analog to digital converter.¹⁸ Otherwise, consumers unknowingly will waste resources investing in equipment that is soon to be obsolete.

Likewise, the Commission should consider, either in this or other proceeding, accelerating its existing requirements on the inclusion of digital tuners in new television sets. In the first review of the digital transition, the Commission wisely implemented transitory digital tuner obligations. However, the schedule may need to be updated. Under current Commission requirements, it is not until July 1, 2007 (or several months after the initial DTV deadline) that

¹⁶ See, e.g., Second Report & Order, *First Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 17 FCC Rcd 15978, 15996 (2002).

¹⁷ See *Notice* at para. 95 (noting that 68 percent of Americans did not understand that analog television sets would no longer work without additional equipment following end of DTV transition).

¹⁸ The Commission has several legal bases from which to require these labels. Perhaps the most obvious is the "all tuner" language of Section 303(s) of the Communications Act. 47 U.S.C. § 303(s). The language of the provision enables the Commission to require consumer television apparatus to receive all available frequencies. Implicit in that language is the Commission's authority to order labels to specify when equipment that resembles television apparatus does not satisfy this presumption or when the apparatus will no longer receive any available frequency.

all television receivers with screen sizes greater than 13 inches in size are required to have any sort of digital tuner. In light of the overriding need to speed consumer acceptance of digital television, the plug-and-play agreement between cable and consumer electronics manufacturers undergoing Commission review, the importance of maintaining competitive parity between cable and broadcast systems, and the express Congressional authority mandated by Section 303 of the Communications **Act**, it would be reasonable for the Commission also to speed deployment of digital tuners ahead of the current schedule. That this effort also will facilitate actual fulfillment of the Section 309(j)(14) market threshold is but further reason for Commission action

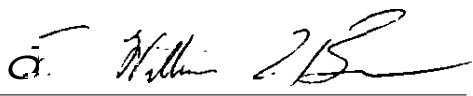
Conclusion

For all the foregoing reasons, NBC/Telemundo supports the Commission's efforts to convince consumers of the benefits of transitioning to digital television while protecting their access to existing analog signals, and urges the Commission to adopt the policies outlined above.

Respectfully submitted,

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